

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CIT BANK, N.A., formerly known as  
ONEWEST BANK, NA,

Plaintiff,

-against-

FRANK A. BIANCHINI, INDIVIDUALLY  
AND AS SURVIVING JOINT TENANT  
WITH RIGHT OF SURVIVORSHIP OF GAIL  
A. SCAMONI; BISHOPS GATE RESIDENTIAL  
MORTGAGE TRUST; JOHN DOE (being  
fictitious and unknown to Plaintiff, intended  
to be tenants, occupants, persons or corporations  
having or claiming an interest in or lien  
encumbering the property described in the  
Complaint or their heirs at law, distributees,  
executors, administrators, trustees, guardians,  
assignees, creditors, or successors.),

Defendants.

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**HURLEY, Senior District Judge:**

Plaintiff OneWest Bank, NA (“Plaintiff”) commenced this diversity action against defendants pursuant to New York Real Property Actions and Proceeding Law Article 13 to foreclose a mortgage encumbering 535 Ashroken Avenue, Northport, New York. Defendants failed to answer the complaint and Plaintiff moved for a default judgment. By Order dated March 26, 2015 the Court referred the motion to U.S. Magistrate Judge Gary R. Brown, pursuant to 28 U.S.C. § 636(b)(3), for a report and recommendation. On February 22, 2016, Judge Brown issued a Report and Recommendation that (1) the motion to amend the caption to dismiss John Doe as a party defendant be granted; (2) the motion for default judgment be granted; and (3) the judgment of foreclosure and sale, together with any award for principal, advances, interest,

**ORDER ADOPTING R & R**

14-CV-3234(DRH)(GRB)

attorneys' fees and costs be denied without prejudice to renewal following submission of requisite documentation, which recommendation was adopted by this Court on March 15, 2016. Plaintiff then filed a renewed motion for judgment of foreclosure and sale, which motion was again referred to Magistrate Judge Brown. On February 28, 2017 Judge Brown issued a Report and Recommendation and a Supplement thereto (collectively, the "2017 R & R") recommending that (1) a Judgment of Foreclosure and Sale be entered in a form substantially similar to the proposed judgment of foreclosure and sale submitted by plaintiff, including (a) that the lien of defendant Bishops Gate Residential Mortgage Trust is invalid and extinguished and (b) setting principal damages in the amount of \$1,102,805.55, attorneys' fees in the amount of \$3,500.00 and costs of \$400.00 for a total of \$1,106,705.50; and (2) the Clerk of the County of Suffolk be directed to index the Mortgage in a form substantially similar to the corrected property description set forth in the proposed judgment of foreclosure and sale. More than fourteen days have elapsed since service of the R&R and no objections have been filed.

Pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72, this Court has reviewed the Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result. Accordingly, this Court adopts the 2017 R&R of Judge Brown as if set forth herein and will on this date execute a Judgment of Foreclosure and Sale substantially in the form proposed by plaintiff.

**SO ORDERED.**

Dated: Central Islip, N.Y.  
March 22, 2017

/s/ Denis R. Hurley  
Denis R. Hurley,  
United States District Judge